

MILPITAS PLANNING COMMISSION AGENDA REPORT

Category: Public Hearing

Project Planner: Kim Duncan

Public Hearing: Yes: X No:

Notices Mailed On: 4-11-03 Published On: 4-10-03 Posted On: 4-11-03

TITLE: VARIANCE P-VA2003-1

Proposal: Request for variance to allow a 2 foot encroachment of a residential addition into required side yard of an existing, legal non-conforming residence.

Location: 123 North Gadsden Drive (APN 029-18-009)

RECOMMENDATION: Denial

Applicant: Chad and Jessica Leffler, 123 N. Gadsden Drive, Milpitas, CA. 95035

Property Owner: Same as applicant

Previous Action(s): Tentative Map

General Plan Designation: Single Family (Low Density)

Present Zoning: Single Family Residential (R1-6)

Existing Land Use: Residential

Agenda Sent To: Applicant/Owner

Attachments: Plans, photos, Applicant's Justification of Variance, letters of support from neighbors

BACKGROUND

In 1960, the Planning Commission approved the Rancho Coelho tentative map for 120 Multi-Family (R3), One or Two Family (R2) and Single Family (R1-6) residential lots. The single family residential lots average a width of 55 feet and development included side yard setbacks of

5 feet and 6 feet. In 1961, the existing single-family residence on the project site was constructed.

In October, 2002, the Planning Commission and City Council approved and adopted new zoning text revisions that include Section 56.03 (Non-conforming Buildings and Uses), which allow additions to legal non-conforming buildings if the addition conforms to all development standards and regulations of the district in which it resides, including yard setbacks. (Section 56.03-1) Prior to the zoning text revision, approval of additions to non-conforming structures was granted only if the entire structure was made to conform to all regulations of the district in which it is located, or with Planning Commission approval through the Use Permit process. The revision was initiated to allow a streamlined process for conforming additions to non-conforming structures that could be consistently and fairly applied. It also intended to clearly disallow expansions that extended the degree of nonconformity of the existing structure to other parts of the structure. This was something that had been allowed even after setback requirements changed, making it difficult to realize the impacts of the change.

Site Description

The subject site is a 6,000 square foot parcel located on the west side of North Gadsden Drive across from Braly Avenue, north of East Calaveras Boulevard and south of Burnett school in a Single Family Residential (R1-6) zoning district. The parcels to the north, east and south are zoned Single-Family Residential (R1-6) and parcels directly west of the subject site are zoned One or Two Family Residential (R2). Outlying parcels to the east and south are zoned Multi-Family Residential (R3).

The site contains an existing 1,306 square foot single-story residence with conforming rear and front yard setbacks. The side yard setback adjacent to the garage is 5 feet and the side yard setback on the alternate side is 6 feet, with the total of both side yards equal to 11 feet.

THE APPLICATION

The variance application (P-VA2003-1) is submitted pursuant to Section 58 (Variances), Section 4.06 (Area, Lot, Width and Yard Requirements) and Section 56.03 (Additions-Enlargement-Moving) of the Milpitas Zoning Ordinance. The variance is a request to allow a 496 square foot residential addition to encroach 2 feet within the required side yard of the subject site to align with the existing structure that encroaches by 2 feet. The degree of encroachment is determined from the City's zoning ordinance development guidelines (Section 4.06), that require side yard setbacks to be a minimum 6 feet adjacent to the garage with the total of both side yards equaling a minimum of 13 feet. As mentioned above, the total of both side yards equals only 11 feet-a difference of two feet, thus a 2 foot encroachment. The request is also a deviation from the City's zoning ordinance Section 56.03 (Additions-Enlargements-Moving) which specifies a legal non-conforming building shall not be added to unless the addition conforms to all development standards and regulations of the district in which it resides, including yard setbacks.

PROJECT DESCRIPTION

Variance

The applicant requests approval of a variance from the ordinance-specified side yard setback requirements for residential structures in single-family residential zoned districts with lot sizes of 6,000 square feet. The ordinance requires a six (6) foot setback from the property line nearest the garage, with a combined minimum of 13 feet for both side setbacks. According to the submitted site plan, the residence lies 6 feet away from the right side property line, and 5 feet away from the left side property line and is thus located within the required side yards. The variance request is to allow the 6-foot side setback of the existing structure to apply to the new addition, rather than setting the addition back farther (by 2 feet) than the existing structure, so the existing structure and addition align.

ISSUES

Conformance with Criteria for a Variance

According to Section 58 (Variance) of the City of Milpitas Zoning Ordinance, which is based on state law, an applicant may apply for and be granted a variance from the strict application of the provisions of the Zoning Ordinance when unnecessary hardships are present for the subject site. The Planning Commission may grant a variance if the following criteria are found applicable:

The required findings for variance approval are as follows:

- a) A variance is intended to alleviate a hardship imposed by the zoning law and arising from the particular size, shape, topography, location, surrounding, or other circumstance.
- b) The basic test in each case is one of hardship; variances should not be granted, except in case of hardship.
- c) Denial of the variance - under the conditions or circumstances presented - would deprive the particular parcel involved of benefits enjoyed by other parcels in the same district.
- d) A variance should not be used to correct a condition or circumstance generally applicable to the entire district.
- e) The granting of the variance must not injure other parcels of property in the same district nor must it be materially detrimental to the public welfare.

Staff concludes that the requested variance does not meet the required findings above due to the following:

a and b) Unique circumstance/Hardship: The subject site is a rectangular shaped lot on the valley floor that contains no irregularities in shape, size, topography, location, surroundings, or other circumstances. The applicant states that the offset would cause problems with tying in the foundation, create different rooflines, add costs and change the lines/look of the house. Furthermore, the applicant states all the houses in the neighborhood have been added on without an offset.

Per Building Division requirements, the plans will need review by a qualified engineer for the addition, as proposed or with an offset foundation, to prevent any structural problems with the

walls, foundation and roof. The site is located in a single-family residential zoning district (R1-6), which does not require architectural review. Appearance is not a factor considered with variance reviews and is unrelated to a finding of a unique circumstance or hardship. As a point of information, building offsets and change in roof lines are always encouraged to add visual interest, reduce the appearance of bulk and vary setbacks viewed from the street, especially in subdivisions of mass-produced homes. Furthermore, additions to homes in the neighborhood pre-dated the previously mentioned October 2002 zoning code revision regarding additions to non-conforming structures. Therefore, this variance application does not present any unique circumstance or hardship.

c) *Deprivation of benefits:* This finding relates to whether adherence to the standards would render the parcel undevelopable for its intended purpose. The setbacks allow a home similar to other homes to be built as well as a sizable addition. In addition, the applicant again compares his house to houses in the neighborhood that existed prior to the October 2002 code change. Not only is there a change in circumstances, but past approvals do not set precedent for variance approvals. Also, the law does not ensure that all properties can be built alike. Lastly, the October 2002 amendment is applicable to all other parcels in the same district as the subject site. Therefore, enforcement of the required setbacks would not deprive the particular parcel benefits enjoyed by other parcels in the same district.

d) *Correction of generally-applicable condition:* The applicant states their situation is common to the immediate neighborhood only. All single family residential (R1-6) parcels in the Rancho Cohelo tract have a lot width of 55 feet. Staff observed that most of the homes built in this tract have a 5 foot side yard setback adjacent to the garage and 6 foot side yard setback on the opposite side. Therefore, the existing side yard setbacks are a circumstance generally applicable to the entire tract and not limited to a single or few parcels of property in a given district

e) *Detriment to others:* Reduced setbacks result in the loss of privacy between neighbors, open space between homes, pervious area for runoff and increased potential for diminished light, air and access between buildings- all contrary to the purpose of establishing zoning restrictions applied consistently to all parcels to protect the public good, as a whole, and individual properties. Personal gain, such as increased property values cited by the applicant, do not justify a special privilege to be granted.

RECOMMENDATION

Close the Public Hearing. Deny the variance request P-VA2003-1 regarding a 2 foot encroachment of a residential addition into required side yard of an existing, legal non-conforming residence, based on the Finding below.

FINDINGS

1. The property lacks uniqueness in size, shape, topography, location, surroundings or other circumstance compared to neighboring parcels;
2. Application of the required setbacks does not pose a hardship with regard to the ability to build on the parcel a structure for the intended use allowed by zoning and of comparable size as other parcels;

3. The required setbacks are applicable to all parcels in the district and are not required to ensure all properties can be built alike. All parcels have been able to develop under these circumstances, including the subject parcel. Therefore, the parcel is not deprived of benefits enjoyed by all other parcels.
4. Granting of the variance is a special privilege that is contrary to the intended purpose of zoning, particularly setback standards and the role setbacks play in incrementally protecting the public good with respect to privacy, open space, access, flow of air and light and pervious area.

City of Milpitas
JUSTIFICATION OF VARIANCE

(408) 942-5185

Planning Division

455 E. Calaveras Boulevard

Milpitas CA 95035

Applicant should complete the statements presented below as thoroughly as possible since it will help determine whether sufficient justification is present to permit the Planning Commission to grant the variance. The Planning Commission will base its decision on all evidence presented, will consider any precedent which might be established, and may attach conditions to an approval. Attach additional sheets of paper if necessary.

A Variance is intended to alleviate a hardship imposed by the zoning law arising from the particular size, shape, topography, location, surrounding, or other circumstances.

ADDITION AT FRONT WOULD HAVE TO BE OFFSET 12-18" FROM EXISTING SIDE YARD CLEARANCE SINCE NEW REQUIREMENTS IS A MINIMUM OF 6' FROM ADJACENT PROPERTY LINE. THIS OFFSET CAUSES PROBLEMS WITH FOUNDATION, MAKE NEW WALLS OFFSET, AND DIFFERENT ROOF LINES. THE LOOK OF THIS OFFSET REALLY CHANGES THE LINES OF THE HOUSE. ALL THE HOUSES IN OUR NEIGHBORHOOD HAVE BEEN ADDED ON WITHOUT THIS OFFSET.

The basic test in each case is one of hardship; variances should not be granted except in case of hardship. AS MENTIONED ABOVE THIS OFFSET ADDS COSTS TO THE CONSTRUCTION. THE OFFSET WILL WEAKEN THE INSTALLATION AND CREATE A SITUATION WHERE CRACKS CAN OCCUR ULTIMATELY DAMAGING THE HOUSE AND CAUSING COSTLY REPAIRS. IT ALSO WILL MAKE A LOOK THAT IS LESS ARCHITECTURALLY PLEASANT TO THE SIGHT AND MAY REDUCE ACCEPTABILITY OF POSSIBLE SELLING OF THE PROPERTY.

Denial of the variance—under the conditions or circumstances presented—would deprive the particular parcel involved of benefits enjoyed by other parcels in the same district.

THROUGHOUT ALL THIS NEIGHBORHOOD "ALL" HOUSES OF SIMILAR LAYOUT HAVE BEEN ALLOWED TO BUILD USING STRAIGHT LINES. OUR IMMEDIATE NEIGHBOR ON THIS SIDE ALSO BUILT THE SAME WAY WITH NO OFFSET. CONDITIONS ARE EXACTLY THE SAME. IT WOULD LOOK STRANGE TO SEE ONE PROPERTY WITH THE OFFSET WHILE THE OTHER DOES NOT. OUR NEIGHBOR AGREES AND WOULD LIKE TO SEE OUR EXTENSION WITH STRAIGHT LINES. A variance should not be used to correct a condition or circumstance generally applicable to the entire district; the condition or circumstance should be one limited to a single or, at the most, a few parcels of property in a given district. OUR SITUATION IS COMMON TO MY IMMEDIATE NEIGHBORHOOD ONLY, AS FAR AS I KNOW.

The granting of the variance must not injure other parcels of property in the same district, nor must it be materially detrimental to the public welfare. I CANNOT ENVISION ANY SITUATION POSSIBLE THAT WOULD BE DETRIMENTAL TO THE PUBLIC WELFARE.

NO OTHER PROPERTY OR OTHER PARCEL WOULD BE INJURED AND I FEEL OUR ADDITION WOULD UPGRADE THE NEIGHBORHOOD LEAVING THE AREA MORE ACCEPTABLE TO OTHERS MOVING IN TO OUR AREA. IT SHOULD ALSO INCREASE PROPERTY VALUES IN THE AREA, AND EVENTUALLY THE TAX RATE WOULD ASSIST IN MILPITAS RECEIPTS.

OUR EXISTING
HOME



NEIGHBOR'S HOME
W/SAME ADDITION



THIS IS
WHAT WE
WANT



2/6/03

City of Milpitas Planning Division,

This letter is basically a letter in support of ourselves. We have gotten letters of support from all of our immediate neighbors and we would just like to add a few more pleas.... First of all my husband has been a Milpitas resident all of his life. His father Bill Leffler is very active in the community coaching baseball and soccer to the kids. Our family had grown from two to four practically overnight and we are growing too big for our small home. Now we enjoy living in Milpitas and on top of that cannot afford to buy a bigger home in the city. It is in our best interest personally and financially to remodel our existing house. We looked into a second story but could not afford it, therefore pulling out in front to add another bedroom and a new dining room/living room is basically our only option financially. Our neighbors at 137 N. Gadsden did the same remodel years back and it looks very nice. Their support is 100%. With our situation jogging in 2 feet will make the addition unrealistically narrow and we will not be able to continue with our plans to remodel.

We hope you will be able to consider all of this for you final decision.

**Sincerely,
Chad & jessica Leffler**

2/3/03

To whom it may concern:

We Mr & Mrs Rodriguez of
137 N. Gadsden Dr grant
full Support and permission
to Mr & Mrs Jeffler to
proceed with their addition
without having to jog in
2 feet. We would like to
see the addition come straight
out.

Sincerely
Damon Rodriguez
Dlisa Rodriguez

408-946-6076

Milpitas Planning,

We do not want to see 123 N. Gadsden Dr have to come in 2 feet on the addition to the front of there home. We are in support of seeing the addition come straight out.

Thank you,

Maria Ibanez 113 N. Gadsden Dr

Our neighbors at 123 Dadson
informed us of a variance request with
the city of Milpitas of 2' for a new
addition ~~to~~ to their existing property.

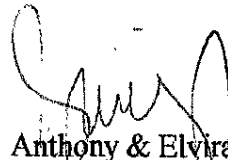
We feel that the request should be
Approved. The lines of the new addition
~~on the new~~ should match the existing
structures

Thank you
Ken Hanna
1572 CARL AVE
MILPITAS CA.

2/5/03

Milpitas Planning Division,

We are in support of our neighbors Chad and Jessica Leffler for their plans on adding on to the front of their house. We do not wish to see them jog in 2 feet.

A handwritten signature in black ink, appearing to read 'Anthony & Elvira Casim', written over the printed name.

Anthony & Elvira Casim
145 N. Gadsden Dr.

To whom it may concern,

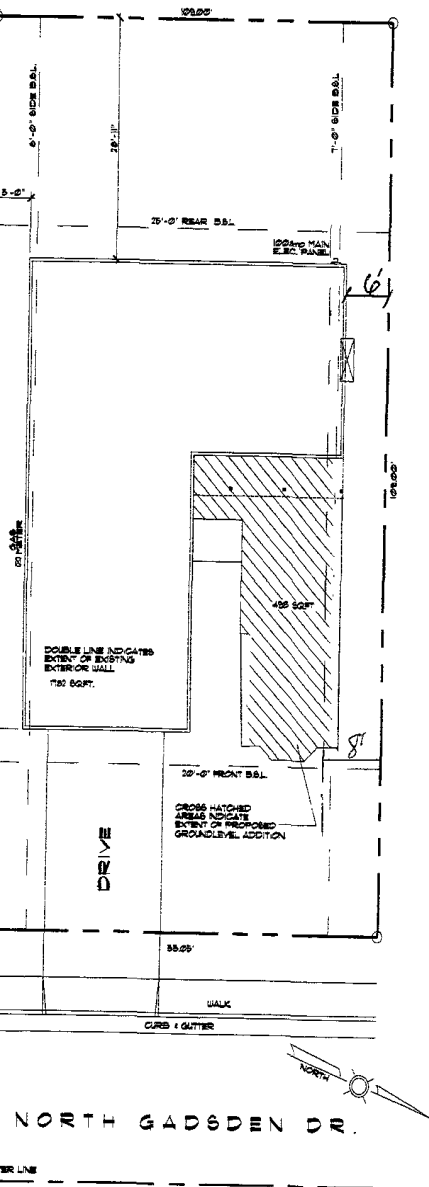
I am in total support of the Leffler's being able to come straight out on the addition to there home. I hope you will not make them come in the 2 feet. This is in the best interest of our immediate neighborhood.

*Karen L. Britthamer
1503 Brady Ave
Milpitas, CA 95035*

To whom it may concern,

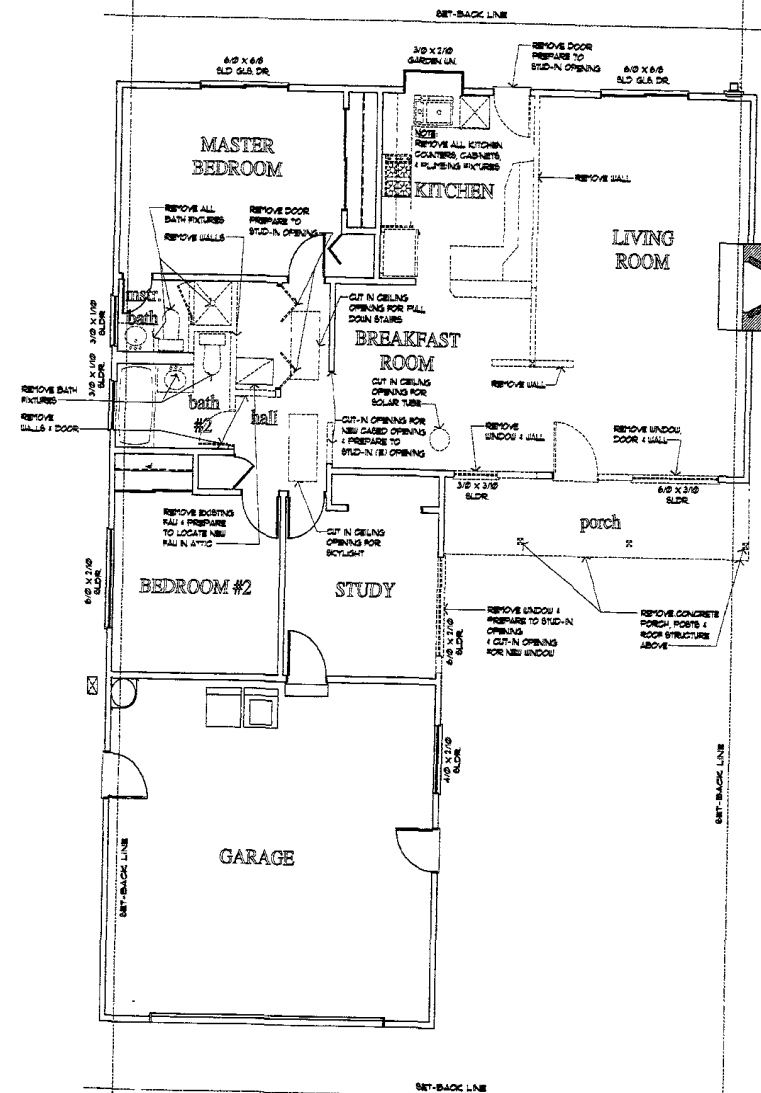
This letter is in support of my neighbors Chad and Jessica Leffler at 123 N. Gadsden Dr.. We do not wish to see the addition come in 2 feet and would like to see it come straight out. We hope this letter will help them, and you to see that letting them come straight out would be in everyone's best interest.

JIM & CLARA CRANEY C. Craney
1502 Brady Ave.
Milpitas CA, 95035 408 945-9168



SITE PLAN $1/8" = 1'-0"$

SHEET INDEX	
SHEET	DRAWING TITLE
1	COVER SHEET
2	SITE PLAN EXISTING FLOORPLAN / DEMOLITION PLAN
3	FOUNDATION / FLOOR HEATING PLAN FOUNDATION DETAILS
4	PROPOSED FLOORPLAN SHEAR WALL PLAN
5	CEILING FRAMING PLAN ROOF HEATING PLAN
6	ROOF PLAN CONSTRUCTION DETAILS GENERAL NOTES
7	EXTERIOR ELEVATIONS
8	CONSTRUCTION SECTIONS INTERIOR ELEVATIONS
9	ELECTRICAL/MECHANICAL PLAN TITLE 24 NOTATIONS
10	INTERIOR FINISH SCHEDULE DOOR SCHEDULE/DOOR TYPES FURNISHING FIXTURES SCHEDULE
WALL LEGEND	
	EXISTING WALLS TO REMAIN
	EXISTING WALLS TO BE REMOVED
	NEW WALLS / PROPOSED CONSTRUCTION
DEMOLITION NOTES	
DEMOLITION PLAN IS PROVIDED FOR REFERENCE ONLY.	
CONTRACTORS SHALL COORDINATE DEMOLITION CAREFULLY WITH FLOORPLAN AND OTHER SHEETS WHICH INDICATE THE EXTENT AND NATURE OF THE NEW CONSTRUCTION. ANY DISCREPANCIES SHALL IMMEDIATELY BE BROUGHT TO THE ATTENTION OF THE DESIGNER.	
CONTRACTOR SHALL SECURELY SHORE IN PLACE ALL OVERHEAD STRUCTURES PRIOR TO REMOVING ANY SUPPORTING STRUCTURES.	
TECHNICAL INFORMATION	
APN #: 025-15-025	
PROJECT ADDRESS: 123 NORTH GADSDEN DRIVE	
OWNER: THE LEPLER'S	
EXISTING USE: SINGLE FAMILY RESIDENTIAL	
ZONING DESIGNATION: R-10	
FLOORED ZONE DESIGNATION: X	
LOT SIZE: 6,000 sq. ft.	
EXISTING RESIDENCE AREA (heated) - - - - -	1,200 sq. ft.
PROPOSED FIRST FLOOR ADDITIONS (heated) - - - - -	450 sq. ft.
PROPOSED SECOND FLOOR ADDITIONS (heated) - - - - -	0 sq. ft.
NEW TOTAL FLOOR AREA (heated) - - - - -	1,650 sq. ft.
EXISTING GARAGE FLOOR AREA (unheated) - - - - -	478 sq. ft.
TOTAL (heated & unheated) - - - - -	2,128 sq. ft.



EXISTING FLOORPLAN / DEMOLITION PLAN $1/4" = 1'-0"$



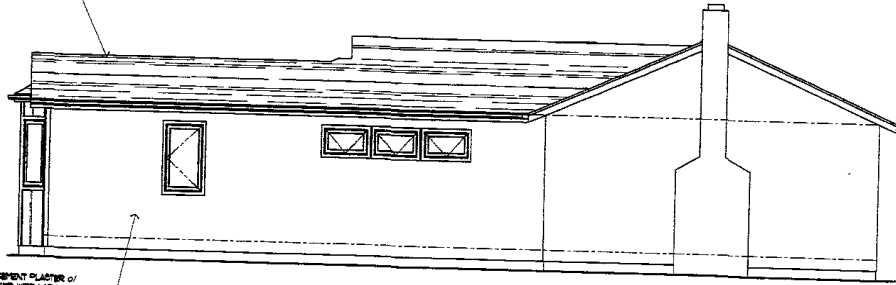
CORNERSTONE LIMITED
 REMODEL / DEMOLITION
 FLOORPLAN
 SHEET INDEX

ANOTHER SUCCESSFUL DESIGN BY:
CORNERSTONE LIMITED
 REMODEL / DEMOLITION
 FLOORPLAN
 SHEET INDEX
 (408) 370-1344
 (408) 370-1345 FAX
 800 GILFILLAN AVE STE 200, GILFILLAN, CALIF 95020

FOR SUBMISSION 10/09/02
 SITE PLAN
 EXISTING / DEMOLITION
 FLOORPLAN
 SHEET INDEX

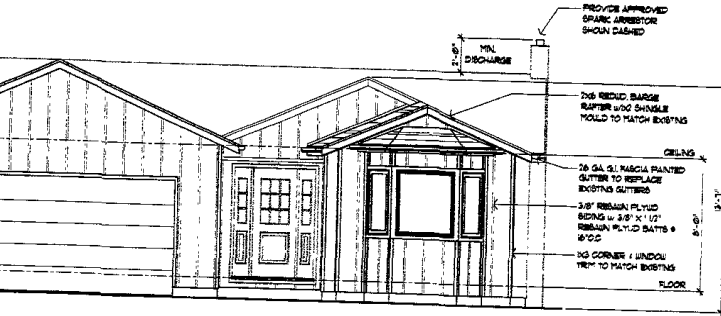
REMODEL TO THE:
LEPLER RESIDENCE
 123 NORTH GADSDEN DRIVE
 MILPITAS, CALIFORNIA 95035
 (408) 942-0843

ARCHITECTURAL SERIES
THICK TAB ASPHALT
COMPOSITION SHINGLES



3-COAT 1/2" GYPSUM PLASTER or
RAPER-BACKED WIRE LATH or
"DUPONT-TYMAC" RUMER TO MATCH
EXISTING TEXTURE

RIGHT SIDE ELEVATION 1/4"=1'-0"



PROVIDE APPROVED
SPRINKLER ARRESTOR
SHOWN CIRCLED

1/2" DISCHARGE

2X6 REDWOOD SHINGLES
RAFTER AND SHINGLE
MOULD TO MATCH EXISTING

CEILING

2X6 OAK SL. PINEA PAINTED
GUTTER TO REPLACE
EXISTING GUTTER

3/8" REDWOOD PLYED
BATTING or 3/8" X 1/2"
REDWOOD PLYED BATTING

NO CORNER WINDOW
TEXT TO MATCH EXISTING
FLOOR

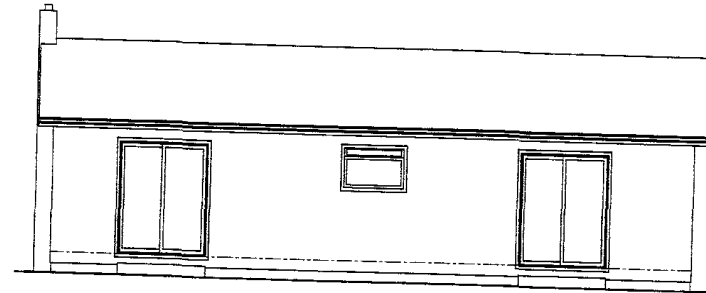
13'-0"

6'-0"

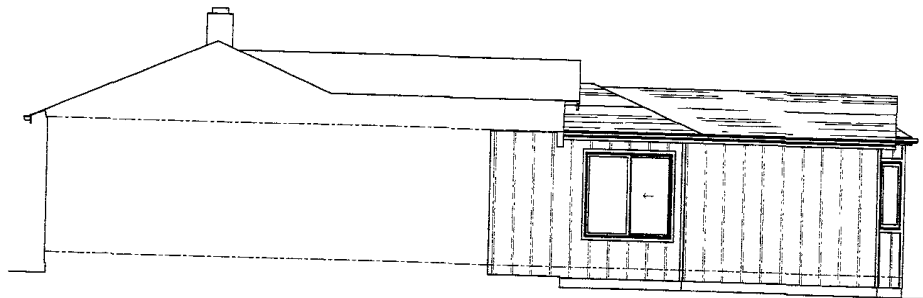
13'-0"

FLOOR

ELEVATION 1/4"=1'-0"



REAR ELEVATION 1/4"=1'-0"



LEFT SIDE ENTRY COURT ELEVATION 1/4"=1'-0"



JOB NAME
LEFFLER

JOB NO. 020307

DATE 10/00/02

DRAWN DU / OF

REVISION
DATE

BY

ANOTHER SUCCESSFUL DESIGN BY:
CORNERSTONE LIMITED
REMODELING DESIGN PROFESSIONALS
(408) 370-3344
(408) 370-3700 FAX
80 GILMAN AVE. #200 GAITHERSBURG, CALIF. 90080

FOR SUBMISSION 10/09/02

EXTERIOR ELEVATIONS

REMODEL TO THE:
LEFFLER RESIDENCE
23 NORTH GARDEN DRIVE
MILPITAS, CALIFORNIA 95035
(408) 942-0943

7
OF 10 SHEETS